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Counsel for Chris McAlary

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

CASH CLOUD, INC.,
dba COIN CLOUD,

Debtor.

Case No.: Case No. BK-S-23-10423-MKN

Chapter 11

**DECLARATION OF CHRISTOPHER
MCALARY IN SUPPORT OF REPLY IN
SUPPORT OF MOTION TO CONVERT
CASE TO CHAPTER 7**

Hearing Date: September 13, 2023
Hearing Time: 9:30 a.m.

I, CHRISTOPHER MCALARY, hereby declare as follows:

1. I am the former Chief Executive Officer of Cash Cloud, Inc. dba Coin Cloud (the “Debtor” or “Cash Cloud”), debtor and debtor in possession in the above captioned chapter 11 case (the “Chapter 11 Case”).

2. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge. I am over the age of 18 and am mentally competent. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

3. I make this Declaration in support of the *Reply in Support of Motion to Convert Case to Chapter 7* (the “Reply”)

1 4. On several occasions I requested that Debtor's counsel object to Cole Kepro's
2 conflicts as a member of the Committee but to date no such objection ever has been filed.

3 5. On August 21, I made a further offer to the estate to purchase the Cole Kepro
4 litigation for \$1,000,000 as well as the Bitcoin and BitAccess litigation for an additional \$200,000,
5 which offer has been refused by the Debtor and the Committee. A true and correct copy of the Asset
6 Purchase Agreement which my counsel transmitted to Brett Axelrod is attached hereto as Exhibit 1.

7 6. Cole Kepro has threatened that any judgement rendered against it by the Debtor will
8 result in a filing of bankruptcy.

9 7. Optconnect, another member of the Committee, and upon information and belief, the
10 other co-chair, is the entity that provided the data connection to the Kiosks, and which shut down
11 the service following the auction due to a dispute with Province over payment of its administrative
12 claim.

13 8. Post-petition control of the Debtor effectively rested with the Debtor's engaged
14 professionals since I relied entirely on such professionals' (including counsel, financial advisors,
15 and independent director) advice and strategy in connection with the company's restructuring and
16 by necessity every material action that was taken was requested by or approved by professionals.

17 9. My resignation was expressly at the behest of the Debtor's professional advisors
18 immediately following the OpConnect termination of the internet to the Kiosks – turning the Kiosks
19 off and making the business worthless. I believed from discussions with those advisors that my
20 resignation was required by the Committee.

21 10. The delay of payment, which dated to December of 2022 and was entirely unrelated
22 to the sale process, was due to Brazil's foreign exchange laws and the difficulty of sending out large
23 amounts of US dollars combined with the fact that the \$500,000 receivable was remitted to the
24 Debtor by its subsidiary in Brazil on June 12th.

25 11. I only recall one discussion with the Debtor where the receivable was raised and that
26 discussion was also a discussion of my setoff rights for the \$1,200,000 loan which is owed to me
27 by the Debtor.

28 12. I was not allowed to speak to any bidder prior to the stalking horse term sheets being

1 delivered to the Debtor. My belief following discussions was that this was at the direction of the
2 Committee. I can now presume that this was because the Committee, headed by Cole Kepro, did
3 not want a plan sponsor they wanted a liquidation.

4 13. I believe that the lawsuit against Cole Kepro is one of the most valuable assets of the
5 estate.

6 14. Despite my repeated requests to Debtor's counsel, no Motion to Lift Stay was ever
7 filed to let the litigation against Cole Kepro proceed in Clark County State District Court

8 15. Daniel Moses and Tanner James were selected and recommended by Province and
9 counsel, and their lack of experience was not conveyed to me.

10 16. I hereby declare under the penalty of perjury that the foregoing is true and correct
11 to the best of my knowledge, information and belief.

12 DATED this 6th day of September 2023.

13 */s/ Chris McAlary*

14 CHRIS MCALARY
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CERTIFICATE OF SERVICE

I am an employee of Carlyon Cica Chtd. On the date of filing of the foregoing papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

☒ ELECTRONIC SERVICE: Pursuant to LR 2002 of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed and served on all parties and attorneys who are filing users through the Notice of Electronic Filing automatically generated by the Court.

☐ UNITED STATES MAIL: By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

☐ OVERNIGHT COURIER: By depositing a true and correct copy of the above-referenced document for overnight delivery via a nationally recognized courier, addressed to the parties listed below which was incorporated by reference and made final in the w at their last-known mailing address.

☐ FACSIMILE: By sending the above-referenced document via facsimile to those persons listed on the attached service list at the facsimile numbers set forth thereon.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Cristina Robertson
An employee of Carlyon Cica Chtd.

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EXHIBIT 1

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1 WHEREAS subsequent thereto the Buyer submitted a bid for the Ongoing Litigation
2 which was accepted by the Debtor;

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4 WHEREAS, Buyer desires to purchase the such claims, upon the terms and subject to the
5 conditions set forth herein;

6 NOW, THEREFORE, the Parties agree as follows:

7 **1. Contingent on Bankruptcy Court Approval.**

8 1.1. *Court Approval.* This Agreement is contingent upon approval of the Bankruptcy
9 Court. The Debtor shall file a motion under Section 363(b) of the Bankruptcy Code to obtain
10 such approval ("**Sale Approval Motion**"). If the Court does not approve this Agreement, then
11 the sale and all obligations hereunder shall be null and void.

12 **2. Purchase and Sale.**

13 2.1. *Purchase and Sale.* Upon the terms and subject to the conditions of this
14 Agreement, Buyer agrees to purchase from the Seller, and Seller agrees to sell, convey, transfer,
15 assign and deliver to Buyer, all of Seller's right, title and interest in the following (collectively,
16 the "**Purchased Assets**"):

- 17 • *Any and all claims of the Debtor or the Bankruptcy Estate against Cole Kepro*
18 *International, LLC or any of its affiliates or principals ("Cole Kepro") , including,*
19 *without limitation, that certain litigation set forth as Cash Cloud v. Cole Kepro*
20 *International, LLC., Case No. A-22-854226-B, pending in the Eighth Judicial*
21 *District Court in Clark County, Nevada ("collectively Cole Kepro Claims");*
- 22 • *Any and all claims of the Debtor or the Bankruptcy Estate against Bitaccess Inc.*
23 *or any of its affiliates or principals ("Bitaccess"), including, without limitation,*
24 *that certain litigation set forth as Cash Cloud v. Bitaccess Inc., which was formerly*
25 *filed as Case No. CV-22-00089887-0000 in the Superior Court of Justice in Ottawa,*
26 *Ontario, Canada (collectively "Bitaccess Claims"); but which now is proceeding in*
27 *arbitration in Ontario, Canada;*
- 28 • *Any and all claims of the Debtor or the Bankruptcy Estate against Lux Vending,*
LLC or any of its affiliates or principals ("Bitcoin Depot"), including, without
limitation, that certain litigation set forth as Cash Cloud v. Lux Vending, LLC dba
Bitcoin Depot adversary proceeding number 23-0101-mkn, in the bankruptcy court
("Bitcoin Claims" and together with Bitaccess Claims the "Software Claims", and
together with the Cole Kepro Claims, the "Purchased Claims")
- All insurance policies, contracts, reports, documents and copies of all Seller's
records, in native form, related to the events, claims or damages in connection with
any of the Purchased Claims, or relevant to discovery propounded in connection

1 therewith (collectively the “*Documents and Records*”).

2 “Purchased Claims” includes, without limitation, any and all claims of the Bankruptcy Estate
3 related to the events described in the Software Claims or the Cole Kepro Claims, and any
4 others subsequently discovered, which have been asserted or could be asserted in the future
against the current defendants or any other parties which might be liable to the Estate for such
claims.

5 2.2. *Purchase Price; Payment Terms.* The purchase price for the purchase of the
6 Cole Kepro Claims is One Million Dollars (\$1,000,000) and the purchase price for the
7 purchase of the Software Claims is Two Hundred Thousand Dollars (\$200,000) for a total
8 of One Million Two Hundred Thousand Dollars (\$1,200,000) (the “*Purchase Price*”). The
9 Cash Purchase Price will be paid by wire to the Debtor within two business days following the
10 date when an order not subject to any appeal, reversal, vacation or stay has been entered by the
11 Bankruptcy Court approving the sale under Section 363 of the Bankruptcy Code in form and
12 substance satisfactory to Buyer (the “*Sale Approval Order*”). Such date shall be referred to
herein as the “Closing Date”. Provided Buyer has been provided proof of payment made by
Debtor prior to Closing, upon the Closing Date, Buyer shall reimburse Debtor for such payment
in an amount not to exceed CAD\$ 261,389.14 consisting of two deposits of CAD\$55,694.57
to ADR Chambers and the deposit of CAD\$150,000 as security for costs, all of which are in
connection with the Bitaccess Claims and specifically the Canadian arbitration.

13 2.3. *Delivery of Documents and Records.* Seller shall preserve and make available to
14 Buyer, on the Closing Date, and for so long after as is reasonably necessary, in a delivery
15 method as mutually agreed upon, the Documentation and Records related to the Purchased
16 Assets.

17 2.4 *Terms of Sale.* The right, title, and interest of the Bankruptcy Estate in the
18 Purchased Assets shall be deemed to pass to Buyer upon entry of the Sale Approval Order
19 (“*Closing*”).

20 Upon the Closing:

21 (a) Buyer may proceed as claimant in any action that could be brought on
22 account of a claim that is part of the Purchased Assets. Buyer shall proceed on such claims
23 in its own name, as successor-in-interest to the Bankruptcy Estate and/or Debtor, whether
such proceeding occurs in the Bankruptcy Court or in any other forum.

24 (b) Buyer has sole and absolute discretion with respect to the claims comprising
25 the Purchased Claims. Buyer will have the exclusive right to prosecute the claims, but is
26 under no obligation to do so. Buyer may assign, compromise, settle, release, or take any
other action relating to the Purchased Claims without approval from the Bankruptcy
Estate, the Debtor, or the Bankruptcy Court (except for the original approval of this
Agreement).

27 (c) Buyer's actions in pursuit of the claims comprising the Purchased Claims
28 are entirely independent of the Bankruptcy Estate; as such, the Bankruptcy Estate, the

Debtor, and the Debtor's counsel shall bear no responsibility or liability whatsoever to any person or entity for any action taken by Buyer in pursuit of the Purchased Claims.

(d) The administration and closing of the Bankruptcy Case shall not affect the continued prosecution of any complaint commenced by Buyer on account of the Purchased Claims, whether pending in Bankruptcy Court or another court.

3. As Is, Where Is Sale. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, MADE BY SELLER WITH RESPECT TO THE PURCHASED CLAIMS, EXCEPT AS TO TITLE. BUYER ACKNOWLEDGES THAT THE PURCHASED ASSETS ARE BEING SOLD, TRANSFERRED, CONVEYED, ASSIGNED AND DELIVERED TO, AND PURCHASED AND ACCEPTED BY, BUYER ON AN "AS IS/WHERE IS" BASIS. SOME OR ALL PURCHASED CLAIMS MAY BE NON- VIABLE OR NOT COST EFFECTIVE TO PURSUE. ALL RISK IS BORNE BY BUYER.

4. Best Efforts; Further Assurances. Subject to the terms and conditions of this Agreement, Buyer and Seller will use their respective commercially reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate and support the transactions contemplated by this Agreement. Seller and Buyer agree to execute and deliver such other documents (such as execution of a Bill of Sale) and to take such other actions as may be commercially reasonably necessary in order to consummate the transactions contemplated by this Agreement, including to vest in Buyer all the rights, title, and interest of the Seller in and to the Purchased Claims and to reasonably assist in the prosecution and collection thereof. Seller shall agree to enter into a reasonably acceptable common interest agreement with respect to the Purchased Claims and, if requested by Buyer, shall provide any conflict waivers deemed necessary by counsel regarding the Purchased Claims as it is currently contemplated that upon the purchase hereof Debtor's current counsel, James M. Jimmerson, shall continue to represent the plaintiff as Nevada counsel.

5. Miscellaneous.

5.1. Authority. Each Party represents, warrants and covenants that the undersigned signatories for such Party have the full legal right, power and authority to bind that Party to this Agreement. Each of the Parties represent that they have received independent legal advice, or have had the opportunity to receive independent legal advice, with respect to the terms of and advisability of executing this Agreement.

5.2. Amendments and Waivers. No modification, waiver, or amendment of any of the terms of this Agreement shall be valid unless in writing and executed by all Parties and approved by the Bankruptcy Court. No waiver of any breach hereof or default hereunder shall be deemed a

1 waiver of any subsequent breach or default of the same or similar or dissimilar nature. No
2 course of dealing or course of conduct shall be effective to amend, modify or change any
3 provision of this Agreement.

4 *5.3. Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure
5 to the benefit of the Parties and their respective successors and assigns including, without
6 limitation, any subsequently appointed Trustee. After Closing, Buyer may freely transfer its
7 rights in and to the Purchased Claims without Bankruptcy Court approval.

8 *5.4. Governing Law.* This Agreement shall be governed by and construed in accordance with
9 the law of the State of Nevada.

10 *5.5. Jurisdiction and Attorney's Fees.* The Parties agree that any suit, action or proceeding
11 between the Parties seeking to enforce or interpret any provision of this Agreement shall be
12 brought exclusively in the Bankruptcy Court or, if the Bankruptcy Court no longer has
13 jurisdiction over such action, in a court of competent jurisdiction located in Clark County,
14 Nevada. The Parties also agree that the prevailing Party shall be entitled to an award of
15 reasonable attorney's fees and costs in such a suit, action or proceeding, in addition to any other
16 relief to which the prevailing Party may be entitled.

17 *5.6. Counterparts.* This Agreement may be signed in any number of counterparts, each of which
18 shall be an original, with the same effect as if the signatures thereto and hereto were upon the
19 same instrument. This Agreement shall become effective when each Party hereto shall have
20 received a counterpart hereof signed by the other Party hereto. Receipt of a counterpart by
21 facsimile or by e- mail transmission of a .pdf file shall suffice for purposes of the previous
22 sentence.

23 *5.7. Entire Agreement.* This Agreement embodies the entire agreement and understandings by
24 and between the Parties. This Agreement supersedes any and all prior or concurrent
25 agreements, understandings, statements, assurances, assumptions, premises, promises,
26 agreements, discussions or representations, oral or written, relating to the foregoing matters,
27 including oral agreements or representations, if any. No Party has made any representations
28 upon which the other Party has relied that are not contained in this Agreement relating to
the foregoing matters. No Party is relying on an unstated assumption, premise or condition
not contained in this Agreement relating to the foregoing matters.

5.8. Severability. This Agreement shall be enforced to the maximum extent permitted by
law. In the event that any one or more of the phrases, sentences, sections, or paragraphs
contained in this Agreement shall be declared invalid or unenforceable by order, decree or
judgment of any court having competent jurisdiction, or shall be or become invalid or
unenforceable by virtue of any applicable law, the remainder of this Agreement shall be
construed as if such phrases, sentences, sections, paragraphs or sections had not been

1 inserted except when such construction shall constitute a substantial deviation from the
2 general intent and purposes of the Parties as reflected in this Agreement.

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4 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly
5 executed by their respective authorized officers as of the day and year first above written.

6 **Seller:**

7 CASH CLOUD INC.,
8 a Nevada Corporation

9 By: _____
10 Name: _____
11 Title: _____

12 **Buyer:**

13 CC BR HOLDCO LLC,
14 a Nevada limited liability company

15 By: _____
16 Name: _____
17 Title: _____
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